To: Renata B. Hesse
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Under the Tunney Act, I wish to comment on the proposed Microsoft
settlement.
I have read over the proposed Microsoft Settlement, and am NOT in favor
of
it, in its current state.
I agree with the problems identified in Dan Kegel's analysis (on the Web
at <http://www.kegel.com/remedy/remedy2.html>), namely:

*   The PFJ doesn't take into account Windows-compatible competing
operating systems
*   Microsoft increases the Applications Barrier to Entry by using
restrictive license terms and intentional incompatibilities. Yet the PFJ
fails to prohibit this, and even contributes to this part of the
Applications Barrier to Entry.
*   The PFJ Contains Misleading and Overly Narrow Definitions and
Provisions
*   The PFJ supposedly makes Microsoft publish its secret APIs, but
it defines "API" so narrowly that many important APIs are not covered.
*   The PFJ supposedly allows users to replace Microsoft Middleware
with competing middleware, but it defines "Microsoft Middleware" so
narrowly that the next version of Windows might not be covered at all.
*   The PFJ allows users to replace Microsoft Java with a
competitor's product -- but Microsoft is replacing Java with .NET. The
PFJ should therefore allow users to replace Microsoft.NET with competing
middleware.
*   The PFJ supposedly applies to "Windows", but it defines that
term so narrowly that it doesn't cover Windows XP Tablet PC Edition,
Windows CE, Pocket PC, or the X-Box -- operating systems that all use
the Win32 API and are advertized as being "Windows Powered".
*   The PFJ fails to require advance notice of technical
requirements, allowing Microsoft to bypass all competing middleware
simply by changing the requirements shortly before the deadline, and not
informing ISVs.
*   The PFJ requires Microsoft to release API documentation to ISVs
so they can create compatible middleware -- but only after the deadline
for the ISVs to demonstrate that their middleware is compatible.
*   The PFJ requires Microsoft to release API documentation -- but
prohibits competitors from using this documentation to help make their

operating systems compatible with Windows.
*   The PFJ does not require Microsoft to release documentation
about the format of Microsoft Office documents.
*   The PFJ does not require Microsoft to list which software
patents protect the Windows APIs. This leaves Windows-compatible
operating systems in an uncertain state: are they, or are they not
infringing on Microsoft software patents? This can scare away potential
users.
*   The PFJ Fails to Prohibit Anticompetitive License Terms
currently used by Microsoft
*   Microsoft currently uses restrictive licensing terms to keep
Open Source apps from running on Windows.
*   Microsoft currently uses restrictive licensing terms to keep
Windows apps from running on competing operating systems.
*   Microsoft's enterprise license agreements (used by large
companies, state governments, and universities) charge by the number of
computers which could run a Microsoft operating system -- even for
computers running competing operating systems such as Linux! (Similar
licenses to OEMs were once banned by the 1994 consent decree.)
*   The PFJ Fails to Prohibit Intentional Incompatibilities
Historically Used by Microsoft
*   Microsoft has in the past inserted intentional incompatibilities
in its applications to keep them from running on competing operating
systems.
*   The PFJ Fails to Prohibit Anticompetitive Practices Towards OEMs

*   The PFJ allows Microsoft to retaliate against any OEM that ships
Personal Computers containing a competing Operating System but no
Microsoft operating system.
*   The PFJ allows Microsoft to discriminate against small OEMs --
including regional 'white box' OEMs which are historically the most
willing to install competing operating systems -- who ship competing
software.
*   The PFJ allows Microsoft to offer discounts on Windows (MDAs) to
OEMs based on criteria like sales of Microsoft Office or Pocket PC
systems. This allows Microsoft to leverage its monopoly on
Intel-compatible operating systems to increase its market share in other
areas.
*   The PFJ as currently written appears to lack an effective
enforcement mechanism.

Also, when Microsoft stops providing bug fixes for a product, they
should be required to open-source that product. The customers who
purchased that product have a reasonable right to expect Microsoft to
provide them with fixes for problems, or to provide them with the means
to fix it themselves. I feel this is true of all software products -
once the copyright holder stops supporting that product, within 5 years
they should lose their copyright on that product, and should be required
to make the source code for that product available to anyone who

purchased it.

In being found guilty of violating antitrust law, Microsoft was found guilty of harming American _consumers_. The consumers are the ones that need redress, not just businesses.

One of Microsoft's chief claims during the trial was they faced plenty of competition, and they pointed to Free and Open Source Software as an example, and yet under Section III(J)(2) and Section III(D) of the PFJ, not-for-profit organizations have no rights at all. Under provisions to release the APIs of Microsoft products, Microsoft is given discretion as to who they will release information: namely, "viable businesses", with Microsoft being able to interpret that as they wish. Thus, the manner in which APIs would be revealed are limiting to Microsoft's main competitor: Free and Open Source Software ("Free" defined as "without restriction" not "free of cost"). This software is created largely by individuals in informal and generally noncommercial cooperation. This is a very significant movement, and provides great potential benefits to American consumers. It is essential that this pro-consumer movement be helped by the settlement. Every consumer who purchased Microsoft products should have access (without cost) to the APIs needed to interact with those products. I feel the APIs should be made fully public.

Also, due to Microsoft's deals with computer sellers requiring them to make a payment to Microsoft for every computer they sell, I cannot purchase a computer from any large seller without paying for a Microsoft operating system, even if I want the computer without any operating system. This seems wrong to me, and reminds me of the kind of deals made by Standard Oil.

Finally, the main concern I have is that the PFJ seems to only limit the future behavior of Microsoft. I do not see any _punishment_. If I commit a crime - whether it is jay walking or murder, or a more abstract crime like embezzlement or libel - the court will _punish_ me for that act. Where is the corresponding punishment for Microsoft? If a person or organization is able to commit illegal acts, benefit from those acts and then receive as a "punishment" instructions that they cannot commit those acts again, they have still benefited from their illegal acts. That is not justice, not for the victims of their abuses and not for the American people in general.

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